Trujillo v. Apple Computer, Inc. et al Doc. 82

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE TRUJILLO, individually and on behalf of all others similarly situated, Plaintiff,	)	No. 07 CV 04946 Judge Kennelly Mag. Judge Ashman
V	)	
APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation, Defendants.	)	

PLAINTIFF'S MOTION FOR LEAVE TO SUPPLEMENT HIS RESPONSE TO DEFENDANT AT&T MOBILITY LLC'S MOTION TO COMPEL ARBITRATION AND FOR LEAVE TO FILE A RESPONSE TO DEFENDANT AT&T MOBILITY LLC'S SUPPLEMENTAL AUTHORITY

NOW COMES the Plaintiff, JOSE TRUJILLO, on behalf of himself and all others similarly situated, by and through his attorneys, LARRY D. DRURY, LTD., and respectfully moves this Court for leave to supplement his response to Defendant AT&T Mobility LLC's Motion to Compel Arbitration and Dismiss, and for leave to file a Response to Defendant AT&T Mobility LLC's Motion for Leave to File Supplemental Authority. In support of this motion, the Plaintiff states as follows:

1. Defendant, AT&T Mobility LLC (AT&T), filed its Motion to Compel Arbitration and Dismiss on October 16, 2007. Plaintiff filed his Response on December 18, 2007, and Defendant filed its Reply on January 11, 2008.

2. Defendant's Motion has not yet been ruled upon.

3. While AT&T's Motion has been pending, Defendant, Apple, filed a Motion for Summary Judgment. This Court set a briefing and discovery schedule on Apple's Motion.

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4. During the course of discovery, Apple has answered Plaintiff's interrogatories and requests to admit. To wit, on March 27, 2008 Apple served counsel for Plaintiff with answers to Plaintiff's First Set of Interrogatories. Certain information contained in Apple's responses to discovery, including but not limited to return policies and restocking fees, directly impact the issues at hand in AT&T's Motion to Compel Arbitration.

5. Without knowledge of these additional policies and terms, this Court's ruling on AT&T's Motion may be based upon partial facts and half-truths. Plaintiff seeks leave to file a supplemental Response so that this Court can make a fully informed ruling on AT&T's Motion.

6. Further, on March 27, 2008 Defendant AT&T filed its Motion for Leave to File Notice of Supplemental Authority in Support of its Motion to Compel Arbitration and Dismiss Action. Said Motion relies upon *Bess v. DirecTV*, *Inc.,* __N.E.2d__, 2008 WL 740344 (Ill.App.Ct. March 18, 2008).

7. Although Defendant seeks to cite *Bess v. DirecTV*, *Inc.* as authority, Defendant fails to mention that the opinion is hardly a few weeks old, having only been recently decided on March 18, 2008. In addition, plaintiff in *Bess* can file a motion to reconsider the Appellate Court's decision, and thereafter appeal to the Illinois Supreme Court. Further, the facts in *Bess* are not analogous to, and are easily distinguishable from, the facts in the case at bar. In short, *Bess* is hardly "authority".

8. If AT&T's motion to file *Bess* as supplemental authority is granted, Plaintiff requests an opportunity to respond to the merits of the *Bess* ruling and the facts that distinguish *Bess* from this case.

9. Plaintiff does not bring this Motion to prejudice the parties or delay these proceedings.

WHEREFORE, Plaintiff, JOSE TRUJILLO, individually and on behalf of all others similarly situated, hereby respectfully requests that this Court enter an order granting him 14 days to file a Response to Defendant's supplemental authority, and leave to supplement his Response to *Defendant's Motion to Compel Arbitration and Dismiss,* and for such further relief as this Court deems appropriate.

Respectfully submitted,

JOSE TRUJILLO, on behalf of himself and all others similarly situated,

By: /s/ James R. Rowe

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